IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 07TH DAY OF OCTOBER 2020

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.S. No.681 of 2005

M/s.Thamraparni Enterprises,
rep. by its Partner, Mr.K.S.Sundaram,
office at No.53/25, Kasturi Rangan Road,
Chennai-600 018. ... Plaintiff

-Versus-

M/s.Simpson and Company Ltd.,(*)
rep. by its Deputy General Manager-
Legal & Indirect Taxes, Mr.S.Ramani,
office at No.861/862, Anna Salai,
Chennai-600 002. ... Defendant
(*)Amended as per order dated 10.03.2014
made in A. No.1704 of 2014

Civil Suit praying that this Hon'ble Court be pleased to pass a judgment and decree against the defendant as follows:

(a) direct the Defendant to pay to the plaintiff a sum of Rs.38,80,060.68 along with interest @ 16% on Rs.26,21,662.62 from the date of plaint till realization;

b) direct the defendant to pay the cost to the suit.

This Suit having been heard on 03.01.2017 in the presence of Mr.K.Harishankar, Advocate for the Plaintiff herein, and Mr.M.Vijayan for M/s.King & Patridge, advocates for the defendant herein, and upon reading the pleadings filed herein and upon perusing the evidence adduced therein, and the other exhibits therein referred to and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto, and this court having observed that the plaintiff has proved that they are entitled to a sum of Rs.25,31,679.85/- with the rate of interest 12% per annum from the defendant and,

<u>it is ordered and decreed the suit in part as follows</u>:-

That the defendant herein do pay to the plaintiff herein a sum of Rs.25,45,830/- (RupeesTwenty Five Lakhs Forty Five Thousand Eight Hundred and Thirty only).

2. That the defendant herein do pay to the plaintiff herein the proportionate costs of this suit as and when taxed by the taxing officer of this court and noted in the margin thereof.

WITNESS THE HON'BLE THIRU AMRESHWAR PRATAP SAHI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 07TH DAY OF OCTOBER 2020. Sd/-

ASSISTANT REGISTRAR (O.S.I)

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

KLY-05/01/2021

C.S. No.681 of 2005

DECREE:-

DATED: 07.10.2020

THE HON'BLE MR. JUSTICE

P.VELMURUGAN

FOR APPROVAL:20/01/2021

APPROVED ON :04/02/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2017

PRONOUNCED ON : 07.10.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S.No.681 of 2005

M/s.Thamraparni Enterprises
rep. by its Partner Mr.K.S.Sundaram .. Plaintiff

.Vs.

M/s.Simpson and Company Ltd.,
rep. by its Deputy General Manager
-Legal & Indirect taxes, Mr.S.Ramani
861/862, Anna Salai, Chennai-600 002 .. Defendant

[Amended as per order dated 10.03.2014
made in A.No.1704/2014]

PRAYER : Civil suit filed praying for judgment and decree against the defendant as follows:-

(a) Direct the defendant to pay to the plaintiff a sum of Rs.38,80,060.68 along with interest @ 16% on Rs.26,21,662.62 from the date of plaint till realization.

(b) direct the defendant to pay the cost to the suit

(c) pass such further or other orders as this court may deem fit and necessary in the circumstances of the case.

For Plaintiff : Mr.K.Harishankar

For Defendant : M/s.King and Patridge.

JUDGMENT

The civil suit is filed by the plaintiff M/s.Thamaraparni Enterprises praying for recovery of money and the prayer is to direct the defendant to pay to the plaintiff a sum of Rs.38,80,060.68 along with interest @ 16% on Rs.26,21,662.62 from the date of plaint till realization and to direct the defendant to pay the cost of the suit.

2. The case of the Plaintiff in brief is as follows:-

(a) The plaintiff is a partnership firm registered under the partnership Act and represented by its Partner Mr.K.S.Sundaram. The defendant company is involved in manufacture and marketing of paints and chemicals and the plaintiff firm was a consumer sales agent of the defendant company since 1984-85. During the course of its business, the plaintiff was required to make a security deposit in the defendant company on account of which, supplies will be made to the plaintiff by the defendant. Therefore, a

Security Deposit was paid to the defendant in 1984-85 for a mutually agreed amount. The defendant company agreed to pay interest on the security deposit @ 16% per annum. The defendant used to periodically credit the interest to the account of the plaintiff and debit the sales made as per the actual transactions. Statements reflecting the transactions and the balance in the security deposit account was furnished by the defendant periodically. In or around the year 2001, the plaintiff has ceased to act as the sales agent of the defendant company. On 18.01.2002, the defendant issued a statement showing the security deposit balance as Rs.25,31,679.85. However, the interest that was accrued is shown as 12%. Subsequently, similar statement was issued on 14.03.2002, wherein the plaintiff's security deposit amount is shown as Rs.26,21,662.68. This was the last statement issued by the defendant company. The plaintiff has been requesting the defendant to close the security deposit account and make payment to the plaintiff. However, the rate of interest has to be given at the agreed rate of 16% per annum. The plaintiff has also issued letter dated 6.11.2004 pointing out to the defendant that the interest rate was 16% per annum and not 12% as shown in the statement dated 18.1.2002. In the said letter, the plaintiff further requested the defendant to return the entire deposit amount with accrued interest at

16% per annum from the date of deposit till repayment. The letter has been received by the defendant. However, no reply has been forthcoming. Despite acknowledgment of the amount due to the plaintiff and despite issuing periodical statements and tax deduction certificates to the plaintiff, the defendant has failed and neglected to return the amount due. The defendant has no valid defence to the claim of the plaintiff as the amount is acknowledged as due by the defendant. Hence, the plaintiff has no other remedy but to file the present suit for refund of the security deposit amount.

3.The contentions in the written statement filed by the defendant is as follows:-

(a) The defendant filed the written statement denying the allegations made in the plaint. It is stated by the Defendant company that the suit is not filed within the period of limitation and is hopelessly barred by limitation. Further, the suit is misconceived and unsustainable in law or on facts and is liable to be dismissed in limine. It is stated by the defendant that the Defendant Company is the manufacturer of paints and chemicals. This Defendant company due to various reasons suffered continuous losses and was therefore referred to the Board of Industrial and Financial

Reconstruction (BIFR) for being declared a sick company in terms of Section 3(1) of the Sick Industrial Companies (Special Provisions) Act 1985 (SICA). The BIFR responded to the company's reference and in Case No.49/2003 vide its order issued on 8th February 2006 , in respect of proceedings of the hearing held on 06.02.2006 before the Bench consisting of S/Shri.Ravindra Gupta , Chairman and A.K.Goswami, Member declared that the company had become a sick industrial company as on 31.03.2002 in terms of Section 3(1)(0) of SICA.

(b) Once the company has been declared a sick industrial company in terms of section 3(1)(o) of SICA, no distress proceedings by way of a suit as contemplated under Section 22 of the above mentioned Sick Industrial Companies (Special Provisions) Act 1985. In view of this, this Defendant Company therefore craves leave of this Court to file an application seeking stay of all further distress proceedings in the above suit. The Plaintiff has completely twisted the facts. The defendant states that periodically the interest was credited to the account of the Plaintiff. When the contract itself was ceased on 31.03.2001 there is no question of any payment of any interest. The defendant has filed the correct statement of accounts and other related documents in support of their contentions. The Defendant Company respectfully submits, further that other Tambraparni Group of Companies viz., Tambraparni Coatings, Tambraparni Surface Coatings, Tambraparni Paints & Chemicals, Tambraparni Containers(P) Ltd., Tambraparni Metals Printers Pvt. Ltd., Tambraparni Distempers etc. who had dealings with the Defendant Company owes substantial amounts of money to the Defendant Company. The Defendant company further states that the claim of the plaintiff has no cause of action to file the suit. The Defendant Company further states that the claim of the plaintiff for Rs.36,80,060.68/- along with interest @ 16% on Rs.26,21,662.62/- is not maintainable either in law or in facts. The suit is devoid of any merit and hence liable to be dismissed with the costs of the Defendant.

4. Based on the pleadings and documents filed by both parties and submission made by both the Counsel the following issues have been framed by this Court on 14.08.2009 :-

1. Whether the plaintiff made security deposit with the defendant and if so whether the balance in the

security deposit as on 18.01.2002 was Rs.25,31,679.85? and whether the plaintiff is entitled to get refund of the same from the defendant?

2. Whether the Plaintiff is entitled to claim interest? if so, at what rate?

3. Whether the plaintiff is entitled to recover the suit amount with subsequent interest and costs?

4. To what relief is the plaintiff entitled?

5. After framing of issues, during trial, on the side of the plaintiff, PW1 was examined and marked Exs.P1 to P3. On the side of the defendants, DW1 was examined and marked Exs.D1 and D2.

6. Heard the rival submissions made on both sides and perused the materials available on record.

Issue No.1:

7. Originally the Plaintiff filed the suit against one M/s.Addisons

Paints & Chemicals Ltd.,(hereinafter called original defendant) represented by its Director for recovery of deposit amount made by the plaintiff with the above said Company. Subsequently, the said Company has filed a petition before Board for Industrial and Financial Reconstruction for rehabilitation proceedings. As per the order passed by the BIFR dated 20.01.2012, the original defendant company was taken over by the present defendant. Therefore, vide order dated 10.03.2014 in Application No.1704 of 2014, the original defendant was struck off and the present defendant has been incorporated. The case of the plaintiff is that the plaintiff is a partnership firm registered under the Partnership Act. The original defendant company is involved in manufacture and marketing of paints and chemicals and the plaintiff firm was a consumer sales agent of the original defendant since 1984-85. During the course of its business, the plaintiff was required to make Security Deposit in the original defendant on account of which, the supplies will be made to the Plaintiff. Therefore, the Security Deposit was paid to the original defendant in the year 1984-1985 for a mutually agreed amount. The original defendant agreed to pay interest on the Security Deposit @ 16% per annum. The original defendant used to periodically credit the interest to the account of the plaintiff and debit the sales made as per the transactions. Statements reflecting the transactions and the balance in the Security Deposit account was furnished by original defendant periodically. In and around the year 2001, the plaintiff has seized to act as the sales agent of original defendant company. On 18.01.2002, the original defendant issued a statement showing the Security Deposit balance as Rs.25,31,679.85/-. However, the interest that was accrued is shown as 12%. Subsequently, similar statement was issued on 14.03.2002, wherein the Plaintiff's Security Deposit amount is shown as Rs.26,21,662.68/- This was the last statement issued by the original defendant. The Plaintiff has been requesting the original defendant to close the Security Deposit account and make payment to the plaintiff. However, the rate of interest has to be given @ 16% p.a. The plaintiff has also issued a letter dated 26.11.2002 pointing out to the defendant that the interest rate was 16% per annum. The Plaintiff has also issued letter dated 06.11.2004 pointing out to the defendant that the interest rate was 16% per annum and not 12% as shown in the statement dated 18.01.2002. In the said letter, the plaintiff further requested the original defendant to return the entire deposit amount with accrued interest at 16% per annum from the date of deposit till repayment. The said letter was received by the original defendant, however, no reply was given despite acknowledgment of the amount due to the plaintiff and despite issuing the periodical statements and tax deduction certificates to the plaintiff, the original defendant has failed and neglected to return the amount due. Therefore, the plaintiff has filed suit for recovery of a sum of Rs.26,21,662.68/- with interest @ 16% per annum from 14.03.2002 till date of realisation.

8. Though the original defendant filed written statement stating that due to various reasons they suffered continuous losses and was therefore referred to Board of Industrial and Financial Reconstruction (BIFR) for being declared as sick company in terms of Section 3 (1) of the Sick Industrial Companies (Special Provisions) Act 1985 (SICA). The BIFR responded to the company's reference and in Case No. 49/2003 vide its order dated 08.02.2006, in respect of proceedings of the hearing held on 06.02.2006 declared that the original defendant company has become Sick industrial Company as on 31.03.2002 in terms of Section 3(1)(0) of SICA. It is the settled proposition of law that once the Company has been declared as Sick Industrial Company in terms of Section 3 (1) (o) of SICA, no distress proceedings by way of suit as contemplated under Section 22 of the above

mentioned Sick Industrial Companies(Special Provisions) Act 1985. Therefore, he seeks leave of this Court to file an application seeking stay of further distress proceedings in the suit. Further, the defendant denied interest rate @ 16% on Rs.26,21,662.62/-. Subsequently the order was passed by the BIFR on 20.01.2012 and pursuant to which, the original defendant got merged with the present defendant and therefore, the present Defendant Company is liable to pay the amount.

9. Now, there is no dispute with reference to the pleading that the original defendant company was involved in manufacture and marketing of paints and chemicals and the plaintiff firm was a consumer sales agent of the original defendant since 1984-85 and during the course of its business, the plaintiff was required to make Security Deposit in the original Defendant company and on account of which supplies will be made to the plaintiff by the original defendant. To prove the claim of the plaintiff, one of the partners of the plaintiff firm was examined as P.W.1 and has filed the proof affidavit in which he reiterated the averments made in the plaint. In order to substantiate his claim, he marked three documents Exs.P1 to P3. Ex.P1 is the statement of account of the original defendant. Ex.P2 is the

copy of the statement of account of the original defendant and Ex.P3 is the letter issued by the Plaintiff's Company to the original defendant dated 06.11.2004, wherein the Plaintiff's Company has stated that a sum of Rs.25,31,679.85/- was held by the original defendant towards Security Deposit as on 01.07.2001 as confirmed in their statement dated 18.01.2002. Further, though it was agreed that the interest would be paid at 16% per annum, the original defendant reduced the interest rate to 12% per annum. From the evidence of P.W.1, Exs.P1 and P2 and in the written statement filed by the original defendant, it is seen that the original defendant has not denied liability and the only defense taken by the original defendant in the written statement was that the Company was referred to BIFR and declared as sick company. Therefore, during the pendency of the proceedings before the BIFR, no other suit can be proceeded. Subsequently, by the order passed by the BIFR, the present defendant has taken over the original defendant Company and therefore though the original defendant has filed written statement, it was objected by the plaintiff. According to the present Defendant, as per Statement of accounts of the defendant Company, a sum of Rs.24,30,381/- (Rupees Twenty Four lakhs thirty thousand three hundred and eighty one only) is standing to the credit of the plaintiff. But the present defendant, in order to substantiate its claim, has not produced any Books of Accounts. Therefore, when the Plaintiff sent the suit notice to the original defendant, he has not sent any reply. Therefore, as per letter issued by the Plaintiff to the original defendant dated 06.11.2004 a sum of Rs.25,31,679.85/- was due as on 01.07.2001. This fact has not been denied either by the original defendant or this defendant. No one man from original defendant was examined and no documents, Books of Accounts of the original defendant was produced. The original defendant has not denied the letter dated 06.11.2004 in his written statement. Therefore, under these circumstances this Court finds that the plaintiff has proved that they are entitled to a sum of Rs.25,31,679.85/- from the present defendant as per Ex.P3. Hence, this issue is answered accordingly.

Issue No.2:-

It is already elaborately dealt with in the earlier issue that the transactions between the plaintiff and the original defendant were admitted and the present defendant has taken over the company of the original defendant and therefore,the present defendant is liable to pay the above said amount. As far as the interest is concerned, according to the plaintiff, as per the agreement they are entitled to 16% per annum and the said fact was denied by the original defendant. Since the original defendant was declared as sick company as on 31.03.2002 vide order of BIFR dated 08.02.2006. Subsequently the present defendant has taken over the original defendant Company and in the interest of justice the defendant is directed to pay interest at the rate of 12% per annum.Even as per Ex.P3, the Plaintiff has admitted that the original defendant reduced the interest to 12% per annum.Though the Plaintiff did not accept the same, it has to be seen that since the case was pending before the BIFR,subsequently it was declared as SICK Company vide order

dated 08.02.2006. Therefore, at the time of filing the suit, the proceedings in case No.49/2003 was pending before the BIFR. But subsequently after passing of the order in the rehabilitation proceedings, the present defendant has taken over the sick company of the original defendant. Therefore, the plaintiff is entitled to 12% per annum.

ISSUE No.3:

(a) As per Ex.P3 dated 06.11.2004, the plaintiff is entitled to Rs.25,31,679.85/- with interest at the rate of 12% per annum from 14.03.2002. However, in view of the fact that at the time of filing of the present suit, BIFR proceedings filed by the original defendant was pending and subsequently, in Case No.49/2003, vide order dated 08.02.2006, BIFR declared the original defendant Company as sick company as on 31.03.2002, Plaintiff is not entitled to any interest as on the declaration as sick company. This issue is answered accordingly.

In the result, this Civil Suit is partly decreed as indicated above with proportionate costs.

Sd/-P.V.J.
07.10.2020.

List of Witness examined on the side of the plaintiffs

K.S.Sundaram - PW1

List of documents marked on the side of the plaintiffs

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Statement of account of the defendant/Addisons Paints and Chemicals Limited Sembiam, Chennai-600 011.	18.01.2002
2.	P2	Statement of account of the defendant/Addisons Paints and Chemicals Limited Sembiam, Chennai-600 011.	14.03.2002
3.	P3	Letter of the plaintiff/Thamraparni Enterprises, Corporate Office, Chennai-600 018 addressed to M.s,Addisons Paints and Chemicals Limited, Sembiam, Chennai-600 011 dated November 6, 2004, which was sent to the defendant along with postal acknowledment	06.11.2004

List of Witness examined on the side of the defendant

S.Ramani - DW1

List of documents marked on the side of the defendant

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Letter of Authorisation	14.06.2016
2.	D2	Statement of Accounts showing the Security Deposit to the credit of Plaintiff as of 01.04.2002	....

Sd/- (P.V.J.)
07.10.2020.

//Certified to be true copy//
Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.